No. 93-1518

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1993

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In Re: JAMES CONSTANT, *Debtor,*
JAMES CONSTANT, *Petitioner,*

v.

ADVANCED MICRO-DEVICES, INC.; KRISTIN M. CANO; KANE, DALSIMER, SULLIVAN, KURUCZ, LEVY, EISELE & RICHARD; AT&T PARADYNE; JONATHAN R. ELLOWITZ; ANTHONY DE ALCUAZ; SKJERVEN, MORRILL, MACPHERSON, FRANKLIN & FRIEL; MORRISON & FOERSTER; LIMBACH & SUTTON; FUJITSU, LTD; FUJITSU MICROELECTRONICS; PAUL MALINGAGIO; SHEPPARD, MULLIN, RICHTER & HAMPTON; BAKER MILLS & GLAST; ACKER, UNDERWOOD & SMITH; FPS, INC; FULLBRIGHT & JAWORSKI; AMERICAN TELEPHONE & TELEGRAPH; SPENSLEY, HORN, JUBAS & LUBITZ; HITACHI AMERICA, INC.; PRETTY, SCHROEDER, BRUEGGEMAN & CLARK; HOPGOODE, CALIMAFDE, KALIL, BLAUSTEIN & JUDLOWE; ANALOG DEVICES, INC.; NEC ELECTRONICS, INC.; BLAKELY, SOKLOFF, TAYLOR & ZAFMAN; BROWN & BAIN; MARCEL HOFF; INTEL CORP.; ROMNEY, GOLANT, MARTEN & ASHEN; AMERICAN MICROSYSTEMS, INC.; GOULD, INC.; TEXAS INSTRUMENTS, INC.; GROSSMAN, GRAVEN, PERRY & BLOCK; DIGITAL SWITCH, INC.; GRANGER ASSOCIATES, INC.; MUNGER, TOLLES & OLSON; ROCKWELL INTERNATIONAL, INC.; TRW, INC.; ARNOLD, WHITE & DURKEE; DAVID L. RAY, Trustee; SALTZBURG, RAY & BERGMAN;
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

ADRIAN M. PRUETZ
Counsel of Record for
Respondents *Fujitsu Limited, Fujitsu Microelectronics, Inc., Morrison & Foerster, and Limbach & Limbach*

MORRISON & FOERSTER
555 West Fifth Street,
Suite 3500
Los Angeles, California 90013
(213) 892-5374

ANTHONY DE ALCUAZ
Counsel of Record for
Respondents *Advanced Micro Devices, Inc.; Skjerven, Morrill, MacPherson, Franklin & Friel; and Anthony de Alcuaz*

SKJERVEN, MORRILL,
MACPHERSON,
FRANKLIN & FRIEL
25 Metro Drive, Suite 700
San Jose, California 95110
(408) 283-1222

Bowne of Los Angeles, Inc., Law Printers (213) 627-2200

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QUESTIONS PRESENTED

Respondents present this statement of the Questions Presented for review because respondents disagree that petitioner James Constant has accurately framed the questions in his Petition for Writ of Certiorari.

1. Whether the Court of Appeals properly affirmed the District Court's dismissal of petitioner's complaint under the doctrine of res judicata where petitioner's complaint sought to raise the same claims and issues previously litigated between the parties and to collaterally attack prior judgments against petitioner.

2. Whether the issuance of sanctions for petitioner's frivolous complaint raises any new or controversial issue of federal law.

3. Whether the routine enforcement of the respondents' sanction judgment against petitioner raises any new or controversial issue of federal law.

RULE 29.1 LISTING

Respondent Fujitsu Limited has no parent company. Fujitsu has the following subsidiaries that are not wholly-owned: Fujitsu Denso, Ltd.; Fujitsu Kiden, Ltd.; Fuji Electrochemical Co., Ltd.; Shinko Electric Industries Co., Fujitsu Business Systems, Ltd., and ICL Corporation. Fujitsu also owns approximately forty-five percent of the shares of Amdahl Corporation.

Respondent Fujitsu Microelectronics, Inc. (FMI) is a wholly-owned subsidiary of Fujitsu Limited. FMI has no subsidiary that is not wholly-owned.

Respondent Advanced Micro Devices, Inc. has no parent company and no subsidiary that is not wholly-owned.

Respondent NEC Electronics, Inc. is a wholly-owned subsidiary of NEC Corporation. The publicly held affiliates of NEC Corporation are: Nippon Electric Glass Co., Ltd.; Japan Aviation Electronics Industry, Limited; Toyo Communication Equipment Co., Ltd.; Nitsuko, Limited; NEC Systems Integration & Construction, Ltd.; Anritsu Corporation; Tokin Corporation; Ando Electric Company, Limited; Nippon Avionics Co., Ltd.; Nippon Electric Industry Co., Ltd.; and Nippon Computer System Co., Ltd.

Respondent Analog Devices, Inc. has no parent company, subsidiary, or affiliate that has issued shares to the public.

Respondent Pretty, Schroeder, Brueggemann & Clark, a professional corporation, has no parent, subsidiary, or affiliate that has issued shares to the public.

Respondent AT&T Paradyne, Inc. is a subsidiary of AT&T. Paradyne has no subsidiary that is not wholly-owned.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
RULE 29.1 LISTING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	2
ARGUMENT	11
I	
THE NINTH CIRCUIT'S AFFIRMANCE OF THE DISMISSAL OF PETITIONER'S COMPLAINT WAS PROPER AND RAISES NO IMPORTANT ISSUE OF FEDERAL LAW AND NO CONFLICT WITH THE DECISIONS OF ANY OTHER COURT	11
A. The Judgments In This Case And In The Prior Cases Are Final	11
B. The District Courts Below And In The Prior Cases Had Subject Matter Jurisdiction, And The Issue Is Res Judicata	13
C. Petitioner's Contention That Respondents' Defenses Were Not Ripe Is Without Merit	15
D. Petitioner Was Not Denied Due Process, And The Issue Is Res Judicata	16
II	
THE DISTRICT COURT PROPERLY SANCTIONED MR. CONSTANT ACCORDING TO WELL-ESTABLISHED PRECEDENT	17

Table of Contents

Page

III

THE DISTRICT COURT'S ENFORCEMENT OF ITS SANCTIONS JUDGMENT, THROUGH THE ASSIGNMENT OF MR. CONSTANT'S PATENTS TO THE U.S. MARSHALL FOR JUDICIAL SALE, WAS SUPPORTED BY WELL-ESTABLISHED PRECEDENT 18

CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Page

Advanced Micro-Devices, Inc. v. Constant, 889 F.2d 1099 (Fed. Cir. 1989) 7

Chicot County Drainage v. Baxter State Bank, 308 U.S. 371, 60 S. Ct. 317 (1940) 14, 15

Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 108 S. Ct. 2166 (1988) 13, 14

Constant v. Advanced Micro-Devices, Inc., 488 U.S. 892, 109 S. Ct. 228 (1988) 4

Constant v. Advanced Micro-Devices, Inc., 490 U.S. 1007, 109 S. Ct. 1643 (1989) 4

Constant v. Advanced Micro-Devices, Inc., 493 U.S. 814, 110 S. Ct. 62 (1989) 6

Constant v. Advanced Micro-Devices, Inc., 493 U.S. 1057, 110 S. Ct. 868 (1990) 7

Constant v. Advanced Micro-Devices, Inc., et al., 848 F.2d 1560 (Fed. Cir. 1988) 3, 15, 16

Constant v. Advanced Micro-Devices, Inc., et al., 862 F.2d 320 (Fed. Cir. 1988) 3

Constant v. Advanced Micro-Devices, Inc., 873 F.2d 1451 (Fed. Cir. 1989) 6

Constant v. Hitachi, 493 U.S. 936, 110 S. Ct. 330 (1989) 4, 5

Constant v. Hillman, 856 F.2d 202 (Fed. Cir. 1988) 5

Constant v. Hitachi America, Ltd., 856 F.2d 202 (Fed. Cir. 1988) 5

Constant v. Hoff, 856 F.2d 202 (Fed. Cir. 1988) 5

Constant v. Wilson, 856 F.2d 202 (Fed. Cir. 1988) 5

Constant v. United States, 861 F.2d 728 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 1007, 109 S. Ct. 789 (1989) ... 7

TABLE OF AUTHORITIES

CASES

Page

Constant v. United States, 929 F.2d 654 (Fed. Cir. 1991), *cert. denied*, 111 S. Ct. 2799 (1991) 7

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S. Ct. 2447 (1990) 14, 18

Flynn & Emrich Co. v. Greenwood, 242 F.2d 737 (4th Cir. 1957), *cert. denied*, 353 U.S. 976, 77 S. Ct. 1060 (1957) 12

In re James Constant, 12 F.3d 1105 (9th Cir. 1993) 10

In re Peregrine Entertainment, Ltd., 116 Bankr. 194 (C.D. Cal. 1990) 19

McClaskey v. Harbison-Walker Refractories Co., 138 F.2d 493 (3d Cir. 1943) 19

Mir v. Little Co. of Mary Hospital, 844 F.2d 646 (9th Cir. 1988) 17

Paganucci v. City of New York, 993 F.2d 310 (2d Cir.).. 17

Peterson v. Sheriff of San Francisco., 115 Cal. 211, 46 P. 1060 (1896) 18

Robi v. Five Platters, Inc., 838 F.2d 318 (9th Cir. 1988) 15, 16

Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 76 S. Ct. 895 (1956) 12

Smith v. Benedict, 279 F.2d 211 (7th Cir. 1960) 12

Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 105 S. Ct. 3325 (1985) 15

Willy v Coastal Corp., 112 S. Ct. 1076 (1992) 17

Zanetti v. Zanetti, 77 Cal.App.2d 553, 175 P.2d 603 (1947) 18, 19

TABLE OF AUTHORITIES

Statutes

	Page
California Code of Civil Procedure Sec. 695.010	18
United States Code, Title 28	
Sec. 157(b)(2)(B)	13
Sec. 157(b)(2)(C)	13
Sec. 1254(1)	2
Sec. 1331	14
Sec. 1334	13
Sec. 1338	14
Sec. 1962	19
United States Code, Title 35	
Sec. 261	19
Sec. 282	3, 4

Rules

Federal Rules of Civil Procedure	
Rule 11	5, 9, 10, 17, 18
Rule 54(b)	12
Rule 58	12
Rule 69(a)	18, 19
Rule 70	19

Miscellaneous

13A Federal Practice & Procedure Sec. 3532	15
18 Federal Practice & Procedure Sec. 4428	15
Restatement (Second) of Judgments 2d § 12	14

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit from which petitioner seeks certiorari is not reported. A copy of the Opinion is attached as Appendix A to the Petition for Writ of Certiorari.

JURISDICTION

The Judgment of the Court of Appeals was entered on December 3, 1993. (Petition App. A.) A petition for rehearing and a suggestion for hearing en banc were denied by the Court of Appeals on January 10, 1994. (Petition App. C.) The Petition for Writ of Certiorari was filed on March 15, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner James Constant's Statement of the Case provides little description of the long procedural history that precedes his Petition. Because this history is necessary to an understanding of the decisions of the lower courts and to consideration of the questions presented, it is recounted in greater detail below. As this history reveals, petitioner has been adjudged a vexatious and recreational pro se litigant who, despite repeated admonishments and sanctions by numerous federal courts, has persisted in an unending attempt to relitigate a variety of unmeritorious claims against respondents[1] and a long list of other high-technology, judicial, governmental, and law firm defendants. Mr. Constant's

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[1]The respondents joining in this Brief in Opposition to the Petition are: Fujitsu Limited; Fujitsu Microelectronics, Inc.; Morrison & Foerster; Limbach & Limbach; Advanced Micro Devices, Inc.; Skjerven, Morrill, MacPherson, Franklin & Friel; Anthony de Alcuaz; Analog Devices, Inc.; NEC Electronics, Inc.; Pretty, Schroeder, Brueggeman & Clark; Hopgoode, Calimafde, Kalil, Blaustein & Judlowe; AT&T

present petition represents his latest (and respondents hope his last) effort in this attempt.

Petitioner's Earlier Lawsuits

The history of this litigation began in January 1985 when petitioner filed an action in the United States District Court for the Central District of California against the corporate respondents and numerous other high-technology companies. *James Constant v. Advanced Micro-Devices, Inc., et al.*, Case No. 85-0262 SVW (C.D. Cal.) ("Patent Case I"). In that action, petitioner alleged infringement of two of petitioner's patents and also asserted other claims based upon the alleged unconstitutionality of 35 U.S.C. § 282, which authorizes federal courts to adjudicate the validity of patents. The District Court found § 282 to be constitutional and dismissed petitioner's claims unrelated to infringement. Then, in November 1987, the District Court (Judge Stephen V. Wilson presiding), after appointing and receiving recommendations from a special master, granted summary judgment that petitioner's patents at issue in the case were invalid. With this judgment, the District Court also awarded respondents their costs.

Petitioner prosecuted two separate appeals of the District Court's judgment in Patent Case I to the United States Court of Appeals for the Federal Circuit. In each instance, the decisions of the District Court were affirmed. *See Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560 (Fed. Cir. 1988); *Constant v. Advanced Micro-Devices, Inc.*, 862 F.2d 320 (Fed. Cir. 1988) (mem.). In its published opinion on the first of these appeals, the Federal Circuit warned petitioner about his already established practice of repeatedly raising previously litigated issues, as follows:

Paradyne; Kane, Dalsimer, Sullivan, Kurucz, Levy, Eisele & Richard; Kristin M. Cano; and Jonathan R. Ellowitz.

> "In the past the appellant has repeatedly attempted to reassert or revive claims and theories after they have been properly dismissed with prejudice by the district court. Appellant is hereby cautioned that if he persists by trying to raise again the same issues that have been finally decided by the district court or by this court, he could be sanctioned under Fed.R.Civ.P. 11, Fed.R.App.P. 38, and the inherent power of the courts to sanction."

Constant, 848 F.2d at 1572.

In response to the Federal Circuit decisions, petitioner filed two petitions for writ of certiorari. Both petitions were denied. *See Constant v. Advanced Micro-Devices, Inc.*, 488 U.S. 892, 109 S. Ct. 228 (1988); *Constant v. Advanced Micro-Devices, Inc.*, 490 U.S. 1007, 109 S. Ct. 1643 (1989).

Dissatisfied with the rulings in Patent Case I invalidating his patents, petitioner filed four new lawsuits in the Central District of California in October and November 1987 naming as defendants, among others, Judge Wilson, the special master appointed by Judge Wilson, and several of the defendants and their attorneys in Patent Case I. *See Constant v. Hillman*, Case No. 87-06592 R; *Constant v. Hoff*, Case No. 87-06766 R; *Constant v. Hitachi America, Ltd.*, Case No. 87-07046 R; *Constant v. Wilson*, Case No. 87-07315 R (collectively, "the Fraud Cases"). In these lawsuits, petitioner sought to collaterally attack the judgment in Patent Case I by claiming that it had been procured through a conspiracy among the defendants, their attorneys, and the federal courts to defraud him. Petitioner also sought to relitigate various issues before the district court in Patent Case I, including whether the proceedings of the patent action violated his right to due process, the constitutionality of 35 U.S.C. § 282, and the constitutionality of summary judgments.

The Fraud Cases came before Chief Judge Manuel Real, who dismissed the complaints against Judge Wilson and the special master on the grounds of judicial immunity and granted summary judgment as to all other defendants on the basis that the Fraud Cases were an improper collateral attack on the rulings in Patent Case I and that petitioner failed to raise any issue of extrinsic fraud. Judge Real also sanctioned petitioner under Rule 11 for filing frivolous lawsuits and awarded defendants their costs and attorneys fees.

Petitioner appealed Judge Real's decisions to the Federal Circuit (Case Nos. 88-1195 to 88-1198), which affirmed the judgments in all respects. *See Constant v. Wilson*, *Constant v. Hillman*, *Constant v. Hitachi America, Ltd.*, *Constant v. Hoff*, 856 F.2d 202 (Fed. Cir. 1988) (mem.). The Federal Circuit also levied its own sanctions against petitioner for filing a frivolous appeal and awarded costs and attorneys fees to defendants, stating in its unpublished opinion:

> "[T]he imposition of Rule 11 sanctions was clearly justified. It is clear from the record that these lawsuits were intended to harass judicial officers and prevailing litigants in the patent suit.
>
> "Many of Constant's attempts to punish the participants in the patent case are rather scurrilous. . . .
>
> "It should have been clear from the opinion of the district court and from the imposition of sanctions that further prosecution of these lawsuits would be unreasonable and frivolous."

Constant v. Wilson, Nos. 88-1195 to 88-1198 unpublished memorandum decision at 17-19 (Fed. Cir. August 25, 1988).

Petitioner subsequently filed a petition for writ of certiorari as to the Fraud Cases. This petition was denied. *See Constant v. Hitachi*, 493 U.S. 936, 110 S. Ct. 330 (1989).

In 1988, petitioner filed another patent infringement case (involving a different patent than those in Patent Case I) against many of the same defendants as in the earlier patent case. *See Constant v. Advanced Micro-Devices, Inc.*, Case No. 88-00784 SVW (C.D. Cal.) ("Patent Case II"). This action was dismissed with prejudice by Judge Wilson for petitioner's continued refusal to comply with a court order to replead his complaint. In dismissing the complaint, Judge Wilson explained "[t]hat the Court is aware that dismissal with prejudice is a severe sanction to impose on a pro se litigant. However .... [h]is pro se status will not shield him from the consequences which any federal litigant must face if he or she insists on pursuing a course of conduct which shows a complete lack of respect for the federal courts." *Constant v. Advanced Micro-Devices, Inc.*, No. 88-00784 SVW unpublished order at 6-7 (C.D Cal. Oct. 31, 1988).

Petitioner appealed the dismissal in Patent Case II to the Court of Appeals for the Federal Circuit, which affirmed the dismissal and again sanctioned petitioner for "filing and maintaining this completely unfounded and vexatious appeal." *Constant v. Advanced Micro-Devices, Inc.*, No. 89-1222 unpublished memorandum decision at 3 (Fed. Cir. April 11, 1989); *see Constant v. Advanced Micro-Devices, Inc.*, 873 F.2d 1451 (Fed. Cir. 1989) (mem.). Petitioner's subsequent petition for writ of certiorari as to the dismissal was denied. *See Constant v. Advanced Micro-Devices, Inc.*, 493 U.S. 814, 110 S. Ct. 62 (1989).

Also in 1988, respondent Advanced Micro Devices, Inc. (AMD) was forced by petitioner's claims in Patent Case II to file an action against petitioner in the Northern District of California for a declaratory judgment that certain other of petitioner's patents were invalid and not infringed by AMD. *See Advanced Micro-Devices, Inc. v. Constant* No. C 88 20101 (N.D. Cal.) (the "DJ Case"). The District Court found on summary judgment that one of petitioner's

patents was invalid and that two others were not infringed. Petitioner appealed this judgment to the Federal Circuit, which affirmed. *See Advanced Micro-Devices, Inc. v. Constant*, 889 F.2d 1099 (Fed. Cir. 1989) (mem.). Petitioner's subsequent petition for a writ of certiorari was denied. *See Constant v. Advanced Micro-Devices, Inc.*, 493 U.S. 1057, 110 S. Ct. 868 (1990)

Yet another action filed by petitioner in 1988, while petitioner's appeal in Patent Case I was pending, was a suit against the United States government in the United States Claims Court asserting that the United States Patent and Trademark Office had somehow breached "patent grant contracts" by issuing him patents that were found to be invalid. *See Constant v. United States*, No. 295-88 (Cl. Ct. 1988) ("PTO Case"). The Claims Court dismissed this action, and petitioner appealed to the United States Court of Appeals for the Federal Circuit, which affirmed. *See Constant v. United States*, 861 F.2d 728 (Fed. Cir. 1988) (mem.), *cert. denied*, 488 U.S. 1007, 109 S. Ct. 789 (1989).

Two years later, in August 1990, petitioner filed a motion for relief from the Claims Court's dismissal of his PTO Case. The Claims Court denied petitioner's motion, and petitioner appealed. The Federal Circuit once again affirmed the dismissal and once again sanctioned petitioner for filing a frivolous appeal, concluding that "[g]iven the number of actions he has filed and the frequency and persistence with which he continues to attempt to relitigate the same theories which have consistently and finally been rejected as meritless, the inescapable conclusion is that Mr. Constant 'is engaged in "recreational" litigation . . . .'" *Constant v. United States*, 929 F.2d 654, 659 (Fed. Cir. 1991), *cert. denied*, 111 S. Ct. 2799 (1991). The Court of Appeals further directed the clerk of the court, "[i]n light of Constant's continuous abuse of the appellate process," "to accept for filing no motion, petition, pleading or other

fileable paper from James Constant without an order of the court approving the filing." *Id.*

Petitioner's Present Lawsuit

In September 1989, petitioner filed a voluntary bankruptcy petition under Chapter 11 (later converted to Chapter 7) in the United States Bankruptcy Court for the Central District of California (*In re James Constant*, LA-89-19270 KL). Nearly all of the creditors' claims identified by petitioner in the bankruptcy petition consisted of claims, made by those defendants that petitioner had previously sued, for payment of the costs and sanctions imposed on him by the various district and appellate courts.

In August 1991, in yet another attempt to relitigate his previously rejected claims of patent infringement, fraud, conspiracy, and other causes of action from Patent Cases I and II, the Fraud Cases, and the DJ Case, petitioner filed a complaint in the Bankruptcy Court against the defendants in the prior cases, their attorneys of record, and the bankruptcy trustee. This complaint began the present lawsuit from which petitioner now seeks certiorari. In this complaint, petitioner objected to the defendants' creditor claims on the grounds that they were based on "void judgments obtained through fraud" and rendered without subject matter jurisdiction or due process and sought to set aside all of the prior federal courts' "orders and judgments," to obtain money damages and injunctive relief for the purported injustice done to him in earlier actions, and to disbar the defendant attorneys.

On respondent Fujitsu's motion, petitioner's complaint was withdrawn from the Bankruptcy Court to the District Court and ultimately was transferred to Chief Judge Real, who had heard petitioner's previous Fraud Cases. Thereafter, petitioner filed a lawsuit against Judge Real, among other judges, seeking, in part, money damages and Judge

Real's removal from the bench. Petitioner then used this newest lawsuit as a device to file a motion to recuse Judge Real, accusing the judge of criminality and impartiality. This motion for recusal was denied by the District Court, the Honorable John G. Davies presiding, which found no cause to disqualify Judge Real.

Respondent Fujitsu subsequently moved to dismiss petitioner's complaint with prejudice on the grounds that it was barred under the doctrine of res judicata and to enjoin petitioner from filing any further actions against the defendants without first obtaining the permission of the Court. This motion was granted by Judge Real, and the Court entered its orders of dismissal and injunction on March 12, 1992.

On April 1, 1992, respondent AMD moved the District Court under Federal Rule of Civil Procedure 11 for an award of attorneys' fees and costs as sanctions for filing a frivolous lawsuit. Judge Real granted this motion, finding that "Mr. Constant filed the Complaint only after several unsuccessful attempts to litigate identical issues of fact and law in other courts" and that the claims in the Complaint were "clearly precluded by previous litigation." Judgment on the sanctions award was entered on June 30, 1992.

When petitioner failed to pay AMD the sanctions awarded, AMD requested the District Court to enforce the sanctions judgment against petitioner's various United States patents and copyrights. On October 22, 1992, Judge Real entered an order directing petitioner to assign his patents and copyrights to the United States Marshall for judicial sale and, if petitioner failed to do so, directing the Marshall to execute the assignment on petitioner's behalf.

Petitioner separately appealed to the United States Court of Appeals for the Ninth Circuit from the three district court final orders dismissing his complaint (Appeal No. 92-

55465),[2] awarding Rule 11 sanctions (Appeal No. 92-56220), and assigning his patents and copyright (Appeal No. 92-56475). The Ninth Circuit affirmed the decisions of the District Court in their entirety, holding that petitioner's complaint was barred under the doctrine of res judicata, that the District Court did not abuse its discretion in awarding Rule 11 sanctions, and that the assignment of petitioner's patents and copyrights was proper. *See In re James Constant*, 12 F.3d 1105 (9th Cir. 1993) (mem.); Petition App. A. Although declining to award sanctions against petitioner, the Ninth Circuit also noted in its unpublished memorandum decision that "Constant's claims are wholly without merit, and his appeals are especially frivolous in light of his long history of repeatedly litigating the same claims despite repeated warnings . . . that he would be sanctioned . . . ." Petition App. A 10.

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[2]In Appeal No. 92-55465, in addition to the order of dismissal, petitioner also appealed the district court orders withdrawing the reference of his complaint to the Bankruptcy Court, denying his motion for recusal of Judge Real, and enjoining petitioner from filing further actions against respondents without the permission of the Court. However, in his Petition, petitioner seeks review only of the order of dismissal. *See* Petition 5, n.3. Respondents therefore do not address these additional issues in this Brief in Opposition.

ARGUMENT

I. The Ninth Circuit's Affirmance Of The Dismissal Of Petitioner's Complaint Was Proper And Raises No Important Issue of Federal Law and No Conflict With The Decisions Of Any Other Court.

Although difficult to comprehend, all of petitioner's arguments for certiorari as to the dismissal of petitioner's complaint appear to be premised on the same fundamental misconception — that because petitioner's claims in this case and in his prior cases were disposed of by summary judgment or dismissal based on such defensive assertions as patent invalidity, res judicata, and failure to comply with court orders, petitioner was wrongly denied the opportunity to litigate his claims on their merits. As a result of this denial, petitioner then apparently contends, the orders and judgments of the district courts below and in his prior cases are void and lack preclusive effect because they are not final, because they were rendered by courts lacking subject matter jurisdiction, and because they denied petitioner his right to due process.

All of these arguments, which effectively would require a trial on a plaintiff's causes of action in every instance regardless of the certainty of any affirmative defense, are plainly without merit and are founded on petitioner's misunderstanding of the statutory and case law that he cites. As such, these arguments raise no important issue of federal law, and in correctly rejecting them, the Ninth Circuit did not conflict with any decision of this Court or any decision of any other circuit. Mr. Constant's Petition therefore should be denied.

A. The Judgments In This Case And In The Prior Cases Are Final.

Petitioner's contention that the judgments in this case and in Patent Cases I and II, the Fraud Cases, and the DJ case

are not final derives from Federal Rules of Civil Procedure 58 and 54(b). Rule 58 governs entry of judgments and states that it is "[s]ubject to the provisions of Rule 54(b)." Fed. R. Civ. P. 58. Rule 54(b) permits a court to "direct the entry of a final judgment as to one or more but fewer than all" of the "claims for relief" in an action involving multiple claims or parties when the court determines that there is no just reason to delay entry of such judgment. Fed. R. Civ. P. 54(b). Petitioner thus appears to argue from these rules that entry of the judgments below and in the prior cases pursuant to Rule 58 was improper, and therefore that the judgments are not final, because they were judgments as to "affirmative defenses" rather than petitioner's "claims for relief" as required by Rule 54(b). *See* Petition 8-9.

Petitioner's argument is in error and arises from his apparent misunderstanding of the judgments that have been entered against him. Although varyingly based, in whole or in part, on defenses of patent invalidity or res judicata, or on petitioner's failure to obey court orders, the judgments entered against petitioner were not, as petitioner contends, separate judgments under Rule 54(b) on affirmative defenses. *Cf. Flynn & Emrich Co. v. Greenwood*, 242 F.2d 737, 741 (4th Cir. 1957), *cert. denied*, 353 U.S. 976, 77 S. Ct. 1060 (1957) (judgment on denial of affirmative defense of estoppel under Rule 54(b)); *Smith v. Benedict*, 279 F.2d 211, 213 (7th Cir. 1960) (judgment on denial of affirmative defense of statute of limitations under Rule 54(b)). Rather, these judgments were final determinations on petitioner's claims that denied him any relief and that concluded the litigation in each particular lawsuit. Thus, neither Rule 54(b) nor the case authority cited by petitioner is applicable here, and petitioner's argument must fail. *See Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 431, 76 S. Ct. 895 (1956) ("there is no doubt that a judgment striking out all [claims for relief] would be a final and appealable decision").

There can be no question that the judgments below and in the prior cases are final judgments. The Ninth Circuit's rejection of petitioner's contention to the contrary raises no important issue of federal law and no conflict with any other court and therefore cannot serve as a basis for certiorari.

B. The District Courts Below And In The Prior Cases Had Subject Matter Jurisdiction, And The Issue Is Res Judicata.

Petitioner's argument that the district courts below and in the prior cases lacked subject matter jurisdiction is primarily based on his misunderstanding both of the judgments that have been entered against him and of the long established well-pleaded complaint rule for determining federal question jurisdiction discussed in this Court's decision in *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 108 S. Ct. 2166 (1988). In this regard, petitioner appears to contend that because his claims for relief were decided against him on the basis of affirmative defenses and his failure to obey court orders, only "issues of defense," and not his causes of action, were litigated below and in the prior cases. Petitioner therefore reasons that because his causes of action were not litigated, the district courts did not have subject matter jurisdiction because jurisdiction cannot be based on issues of defense. Petition 9-10. This reasoning by petitioner, however, is erroneous, and the record is clear that the district courts below and in the prior cases had subject matter jurisdiction.

Petitioner's complaint below was filed as an objection to creditor's claims and as a counterclaim against creditors in his bankruptcy case. *See* 28 U.S.C. §§ 157(b)(2)(B)-(C). Bankruptcy cases under title 11 of the United States Code are subject to the original jurisdiction of district courts. 28 U.S.C. § 1334. Therefore, the district court below clearly had jurisdiction over petitioner's complaint. This jurisdiction was not, contrary to petitioner's assertions, somehow

divested from the district court by its ruling that petitioner's claims were barred under the doctrine of res judicata. Neither petitioner's reliance on the well-pleaded complaint rule, which provides only that "arising under" jurisdiction requires that a plaintiff's causes of action be based on or necessarily involve questions of federal law and cannot be based merely on anticipation of a federal defense, *see Christianson*, 486 U.S. at 807-10, 108 S. Ct. at 2173-74, nor common sense support such assertions by plaintiff. *See, e.g., Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, ___, 110 S. Ct. 2447, 2455 (1990) ("The district court's jurisdiction, invoked by the filing of the underlying complaint, supports consideration of . . . the merits of the action . . . .").

Similarly, the prior cases that petitioner attacks (Patent Cases I and II, the Fraud Cases, and the DJ Case) all involved the determination of either the validity and infringement of petitioner's patents or other federal claims made by petitioner, and the district courts in those cases therefore had jurisdiction under either 28 U.S.C. § 1338 or § 1331. Again, the judgments in those cases, as in the case below, could not and did not divest the district courts of that jurisdiction. In any event, the jurisdiction of the district courts in those cases, which either was explicitly challenged by petitioner or could have been raised by him, was res judicata and was not the proper subject of collateral attack in the case below.[3] *See Chicot County Drainage v. Baxter*

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[3]Petitioner's contention that he should be permitted to collaterally attack the subject matter jurisdiction of the district courts in the prior cases in light of the factors described in the *Restatement (Second) of Judgments 2d* § 12, *see* Petition 17-19, is without merit. These factors include (1) that the exercise of jurisdiction was a manifest abuse of authority; (2) that allowing the judgment to stand would substantially infringe the authority of another tribunal; or (3) that the court that exercised jurisdiction was not capable of adequately determining its own jurisdiction. *Restatement (Second) of Judgments 2d* § 12. As the foregoing discussion of petitioner's erroneous theory of the lack of

State Bank, 308 U.S. 371, 376-78, 60 S. Ct. 317 (1940); *Robi v. Five Platters, Inc.*, 838 F.2d 318, 321-22 (9th Cir. 1988); *Constant*, 848 F.2d at 1564 (jurisdiction to review the validity of patents challenged in Patent Case I); *Constant v. Wilson*, Nos. 88-1195 to 88-1198 unpublished memorandum decision at 11-12 ("The complaint . . . asks the court to declare the judgment in the patent case to be void because the district court lacked jurisdiction."); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4428, at 280-82 (1981) (hereinafter, *Fed. Prac. & Proc.*); 13A *Fed. Prac. & Proc.* § 3536, at 539.

C. Petitioner's Contention That Respondents' Defenses Were Not Ripe Is Without Merit.

As a secondary basis for asserting lack of jurisdiction of the district courts below and in the prior cases attacked by petitioner, petitioner also appears to contend that affirmative defenses in these cases were not ripe for determination unless and until petitioner's claims were found to be meritorious. Because, according to petitioner, he did not have the opportunity to litigate his causes of action, petitioner therefore argues that the judgments of the district courts at issue were rendered without meeting the Article III requirement of a case or controversy. *See* Petition 14-15.

This unprecedented argument by petitioner clearly misapplies the ripeness doctrine. All of the cases attacked by petitioner involved actual and concrete disputes between the parties that were ripe for determination and that ultimately were resolved against petitioner. *See generally Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 580-581, 105 S. Ct. 3325 (1985); 13A *Fed. Prac. & Proc.* § 3532. Petitioner's contention that his causes of action should have been determined first in these actions without

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jurisdiction in the prior cases indicates, none of these factors could be met in this case.

consideration of any affirmative defense is both unsupportable and unthinkable.

D. Petitioner Was Not Denied Due Process, And The Issue Is Res Judicata.

As a final argument for certiorari as to the dismissal of petitioner's complaint, petitioner appears to contend that he was not permitted to be heard on his claims below and in the prior cases that he attacks because those claims were decided against him on the basis of affirmative defenses and that therefore he was denied due process. *See* Petition 15-17. Like petitioner's other arguments, this contention is erroneous. The case below and the prior cases unquestionably provided petitioner with complete due process and an opportunity to be heard on his claims. *See Constant*, 848 F.2d at 1565 ("federal judicial proceedings, with their extensive notice, opportunity to be heard, and procedural protections, satisfy the constitutional requirement of due process"). Moreover, petitioner repeatedly raised, or could have raised, his claims of denial of due process in the prior cases, and those cases therefore are res judicata and may not be collaterally attacked. *See, e.g., id.*; *Constant v. Wilson*, Nos. 88-1195 to 88-1198 unpublished memorandum decision at 16 (Fed. Cir. Aug. 25, 1988) ("Constant's complaints also explicitly seek to relitigate various issues . . . in [Patent Case I] concerning . . . whether the proceedings of the patent action violated Constant's right to due process."); *see also Robi*, 838 F.2d at 321-22. Thus, the Ninth Circuit rejection of petitioner's argument and affirmance of the dismissal of the complaint raise no new or substantial issue of federal law and no conflict with any other court, and the Petition therefore should be denied.

II. The District Court Properly Sanctioned Mr. Constant According To Well-Established Precedent.

The District Court sanctioned Mr. Constant for filing his frivolous complaint in the present action, which reasserted the same meritless claims rejected in Mr. Constant's previous lawsuits against the defendants. As stated by the Ninth Circuit, Mr. Constant's present lawsuit was a continuation of his "relentless campaign of frivolous litigation against these defendants," notwithstanding prior warnings of the federal courts to Mr. Constant not to persist in bringing these claims. Petition App. A, at 8.

None of Mr. Constant's arguments for certiorari based on the sanctions award has any merit. Federal Rule of Civil Procedure 11 provides for sanctions against a person who signs a frivolous pleading (here, Mr. Constant who himself signed and filed his *pro per* complaint), and the federal courts have consistently recognized the propriety of sanctions against a person who reasserts claims barred by the defense of res judicta. *See, e.g., Paganucci v. City of New York*, 993 F.2d 310, 312 (2d Cir.) (affirming Rule 11 sanctions for filing of frivolous, repetitious claims barred by res judicata which court had previously warned plaintiff not to assert — "No court should have to endure such unreasonable and inappropriate conduct"), *cert. denied*, 114 S. Ct. 90 (1993); *Mir v. Little Co. of Mary Hospital*, 844 F.2d 646, 652 (9th Cir. 1988) (attempt to relitigate matters barred by res judicata constitutes frivolous filing for Rule 11 purposes).

Mr. Constant's argument that the District Court somehow lacked jurisdiction to sanction him for the frivolous complaint, which he himself signed and filed, is baseless. As discussed *supra*, the District Court plainly had jurisdiction to consider and dismiss Mr. Constant's claims. Regardless, as this Court has held in *Willy v. Coastal Corp.*, 112 S. Ct. 1076 (1992), Rule 11 sanctions may be imposed and en-

forced in a case "even when subject-matter jurisdiction is eventually found lacking." *Id.* at 1081 n.5; *see also Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, ___, 110 S. Ct. 2447, 2455 (1990) ("The district court's jurisdiction, invoked by the filing of the underlying complaint, supports consideration of both the merits of the action and the motion for Rule 11 sanctions arising from that filing.")

The District Court's sanction award against Mr. Constant was proper, and raises no new or controversial question of federal law.

III. The District Court's Enforcement Of Its Sanctions Judgment, Through The Assignment Of Mr. Constant's Patents To The U.S. Marshall For Judicial Sale, Was Supported By Well-Established Precedent.

Likewise lacking in merit is Mr. Constant's argument for certiorari based on the District Court's assignment of his patents to the U.S. Marshall for judicial sale, to enforce the defendants' sanctions judgment against him. Federal Rule of Civil Procedure 69(a) authorizes the district court to enforce its money judgments in accordance with the practice and procedure of the state in which it sits. California law provides that intangible property, such as Mr. Constant's patents, is subject to enforcement of a money judgment. Cal. Civ. Proc. Code § 695.010. California law authorizes the court to direct the patent owner to assign his or her patents to a judicial officer, for judicial sale for the benefit of the patent owner's judgment creditors. *Peterson v. Sheriff of San Francisco*, 115 Cal. 211, 46 P. 1060 (1896). If the patent owner refuses to execute the assignment as ordered, the court may authorize another person appointed by the court (here, the U.S. Marshall) to execute the assignment for purposes of subjecting the patents to judicial sale. *Zanetti v. Zanetti*, 77 Cal.App.2d 553, 559, 175 P.2d 603,

606 (1947). *See also McClaskey v. Harbison-Walker Refractories Co.*, 138 F.2d 493, 499 (3d Cir. 1943) (patent attached by sheriff under writ of *fieri facias*; sheriff's signature on assignment, on behalf of judgment debtor, is sufficient to constitute assignment); Fed. R. Civ. P. 70 (judgment may direct party to execute an assignment of property; if the party fails to do so, the court may direct some other person appointed by the court to execute the assignment on behalf of the party).

Mr. Constant's petition for certiorari ignores these relevant, well-established authorities concerning assignment of patents to enforce a judgment against a patent owner, and instead cites numerous decisions and statutes having nothing to do with the issue. For instance, the bankruptcy court's decision in *In re Peregrine Entertainment, Ltd.*, 116 Bankr. 194 (C.D. Cal. 1990), deals with the competing security interests of creditors in the judgment debtor's copyrights, and has no application to a patent or copyright owner's objection to the judicial assignment of his patents or copyrights to enforce a money judgment against him. Mr. Constant's citation to 28 U.S.C. § 1962, concerning federal courts' judgment liens being handled in the same manner as a judgment of a state court sitting in that state, *cf.* Fed. R. Civ. P. 69(a), likewise provides no support for Mr. Constant's assertion that United States patents are somehow not subject to enforcement of judgment debts.

The only citation by Mr. Constant that has any relevance to the present case is 35 U.S.C. § 261. That statute provides that "patents, or any interest therein, shall be assignable in law by an instrument in writing." The District Court's order, directing the U.S. Marshall's execution of a *written* assignment of Mr. Constant's patents after Mr. Constant refused to do so, is consistent with this statute. The District Court's assignment order, in accordance with the above-cited, well-established precedent authorizing the judicially compelled

assignment of United States patents for judicial sale to enforce a judgment debt, was proper and provides no basis for granting Mr. Constant's Petition.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

/s/ ADRIAN M. PRUETZ

ADRIAN M. PRUETZ
Counsel of Record for
Respondents
Fujitsu Limited,
Fujitsu Microelectronics, Inc.,
Morrison & Foerster, and
Limbach & Limbach

MORRISON & FOERSTER
555 West Fifth Street,
Suite 3500
Los Angeles, California 90013
(213) 892-5374

ANTHONY DE ALCUAZ
Counsel of Record for
Respondents
Advanced Micro
Devices, Inc.; Skjerven,
Morrill, MacPherson, Franklin &
Friel; and Anthony de Alcuaz

SKJERVEN, MORRILL,
MACPHERSON,
FRANKLIN & FRIEL
25 Metro Drive, Suite 700
San Jose, California 95110
(408) 283-1222